

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Parks and Recreation Department
AGENDA DATE: August 9, 2005
CONTACT PERSON/PHONE: Norman Merrifield, (915) 541-4331
DISTRICT(S) AFFECTED: 8

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? **OR AUTHORIZE** the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

That the City Manager be authorized to execute the Donation Agreement between the City of El Paso, on behalf of the Parks and Recreation Department, and Parents Association for Recreation for Kids Inc., regarding the donation of a shade structure. The value of the walking path is estimated to be \$66,000.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

Shade structure will be utilized at White Spur Park.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

N/A

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD:

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to execute the Donation Agreement between the City of El Paso, on behalf of the Parks and Recreation Department, and Parents Association for Recreation for Kids Inc., regarding the donation of a shade structure at the White Spur Park, which will be utilized at White Spur Park. The value of the shade structure is estimated to be \$66,000. (District 8.)

ADOPTED this the ____ day of _____, 2005.

THE CITY OF EL PASO

John Cook, Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Jennifer F. Callan
Assistant City Attorney

APPROVED AS TO CONTENT:

Norman C. Merrifield, Ed.D.
Director, Parks and Recreation Department

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

DONATION AGREEMENT

This Donation Agreement (“Agreement”) is hereby entered into on this the ____ day of _____, 2005, between the CITY OF EL PASO, a municipal corporation, and PARENTS ASSOCIATION FOR RECREATION FOR KIDS, INC., a not-for-profit corporation.

WHEREAS, PARENTS ASSOCIATION FOR RECREATION FOR KIDS, INC. (“P.A.R.K.”) previously donated to the CITY OF EL PASO (“CITY”), on behalf of the Parks and Recreation Department, a specially designed “playground” to be utilized as a feature at the White Spur Park in accordance with the terms of the original donation agreement, dated February 24, 2004; and

WHEREAS, on or about March 2005, the CITY and P.A.R.K. amended the original donation agreement to include the donation and construction of a walking path around the perimeter of the White Spur Park by P.A.R.K.; and

WHEREAS, the CITY and P.A.R.K. desire to again amend the donation agreement to allow P.A.R.K. to donate and construct a shade structure on the premises of the White Spur Park; and

WHEREAS, the CITY desires to accept the donation of the shade structure to be utilized as a feature at the White Spur Park in accordance with the terms of this Agreement, as set forth below;

NOW THEREFORE, for and in consideration of mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, P.A.R.K. agrees to donate, and the CITY hereby accepts the donation of a shade structure at the Park for use under the conditions set forth below.

IT IS EXPRESSLY UNDERSTOOD AND AGREED that:

1.0 Terms of Donation

1.1 P.A.R.K. shall donate a shade structure for use as a permanent feature at the White Spur Park, located at 4800 Love Road, El Paso, Texas 79922.

1.2 The shade structure will be designed and built with the review and approval of the director of the Parks and Recreation Department or his designee. P.A.R.K. acknowledges and warrants that it shall retain EPlayz to build said shade structure.

1.3 The value of this specially designed barrier-free and developmentally advantageous playground is estimated to be \$66,000.00.

1.4 The CITY accepts the donation of the shade structure at the White Spur Park; provided, however, that in order to be accepted by the CITY, said shade structure must comply with applicable codes and ordinances and with the CITY's needs for park facilities.

1.5 P.A.R.K. shall provide the CITY with appropriate documentation from all employees of EPlayz involved in the building of the shade structure, including but not limited to waivers of liability against the CITY.

1.6 P.A.R.K. understands and warrants that it shall assign all manufacturers' warranties associated with this shade structure to the CITY.

1.7 The parties agree that the CITY shall have full discretion as to the location as well as the manner of display and utilization of this playground. P.A.R.K shall be responsible for design and installation of the shade structure as a permanent feature of the White Spur Park in the location approved by the director of the Parks and Recreation Department or his designee, and subject to the monitoring of the design and installation by the director or his designee.

1.8 Following the installation, the CITY shall have full ownership of the shade structure and shall maintain it as it does other shade structures in the park system.

2.0 Contractual Relationship

2.1 P.A.R.K and its subcontractors, including EPlayz, are independent contractors. Except as may be expressly and unambiguously provided in this Agreement, no partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship between the parties or any of their officers, employees, agents or sub-contractors, including but not limited to E-Play.

(A) As an independent contractor, P.A.R.K understands and agrees that it will be responsible for its respective acts or omissions, and the CITY shall in no way be responsible as an employer to the P.A.R.K's officers, employees, agents, representatives or sub-contractors, including E-Playz, who perform any service in connection with this Agreement.

(B) P.A.R.K shall select their own employees and such employees shall be and act under the exclusive and complete supervision and control of the P.A.R.K

2.2 Subcontractors. P.A.R.K warrants that the services, and those of its subcontractor(s) will be performed in a professional manner in accordance with the applicable professional standards.

(A) Compliance by subcontractor(s), including EPlayz, with this Agreement shall be P.A.R.K's responsibility.

(B) P.A.R.K understands and agrees that the CITY shall in no event be obligated to any third party, including EPlayz or any other subcontractor(s) of P.A.R.K, for performance of work or services under this Agreement.

2.3 P.A.R.K shall not receive any compensation or benefit from the CITY under this Agreement.

2.4 P.A.R.K understands and expressly agrees that, in all things relating to this Agreement, the CITY is performing a governmental function, as defined by the Texas Tort Claims Act. The parties hereby agree that the CITY enters into this Agreement as a governmental entity for the purpose of performing a governmental function.

2.5 P.A.R.K understands and expressly agrees that the CITY shall not be obligated or liable hereunder to any person other than P.A.R.K.

3.0 INDEMNIFICATION

3.1 P.A.R.K UNDERSTANDS AND AGREES THAT IT WILL INDEMNIFY AND HOLD HARMLESS THE CITY AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY FEES FOR THE DEFENSE OF ANY AND ALL CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY OR INDIRECTLY TO THE NEGLIGENT, GROSS NEGLIGENT, INTENTIONAL, MALPRACTICE OR WILLFUL ACTS OR OMISSIONS OF P.A.R.K, IT'S AGENTS, SUBCONTRACTORS, EMPLOYEES, OR REPRESENTATIVES RELATING TO THE DESIGN OR INSTALLATION OF THE SHADE STRUCTURE THAT IS THE BASIS OF THIS AGREEMENT.

4.0 Funding

4.1 P.A.R.K acknowledges and warrants that it shall raise the funds necessary for the design and installation of said shade structure at the White Spur Park, which is estimated to be \$66,000.00. In the event that P.A.R.K cannot or is unable to raise the necessary funds for this project, said Agreement shall become null and void.

4.2 The City approved the monetary support of \$1,000.00 available from the discretionary funds for City Council Representative District 1, for use in the development of said park under the original donation agreement, as previously approved by City Council on or about December 7, 2004. The CITY reserves the right to provide additional monetary support if deemed appropriate by City Council.

5.0 General Provisions

5.1 Ownership. The shade structure shall remain at all times the property of the CITY.

5.2 Amendments and Waiver. The parties may amend this Agreement at any time by mutual consent. Unless otherwise provided herein, this Agreement may be amended only by written instrument duly executed on behalf of the CITY and P.A.R.K.

5.3 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law, the City Charter and/or any ordinance of the City of El Paso.

5.4 Severability. All agreements and covenants contained in this Agreement are severable. Should any term or provision of this agreement be declared invalid by a court of competent jurisdiction, the parties intend that all other terms and provisions of this agreement should be valid and binding and have full force and effect as if the invalid portion had not been included.

5.5 Venue. For the purpose of determining place of this Agreement and the law governing the same, this Contract is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, State of Texas.

5.6 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received via United States Postal Service post office or certified mail, return receipt requested addressed to the respective other party at the address listed below or at such other address as the receiving party may have theretofore prescribed by written notice to the sending party.

The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

CITY:	City of El Paso Attention: City Manager's Office Two Civic Center Plaza, 10 th Floor El Paso, Texas 79901-1196
COPY TO:	Parks and Recreation Department Two Civic Center Plaza, 6 th Floor El Paso, Texas 79901-1196
DONOR:	P.A.R.K Attention: Sabrina Crowley 4404 Lazy Willow El Paso, Texas 79922

5.7 Warranty of Capacity to Execute Agreement. The person signing this Agreement on behalf of P.A.R.K warrants that he/she has the authority to do so and to bind P.A.R.K to this Agreement and all the terms and conditions contained herein.

Each person signing below represents that he or she has read this Agreement in its entirety; understands its terms; and agrees on behalf of such party that such party will be bound by those terms.

Executed, this the _____ day of _____, 2005.

City of El Paso

Joyce Wilson, City Manager

**Parents Association for
Recreation for Kids, Inc. (P.A.R.K.)**

Sabrina Crowley
Title: _____

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Jennifer F. Callan
Assistant City Attorney

Norman C. Merrifield, Ed.D.
Director, Parks and Recreation Department